

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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BLACK LOVE RESISTS IN THE RUST, et al.

Plaintiffs,

-vs-

CITY OF BUFFALO, et al.

Defendants.

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NOTICE OF MOTION

Civil Action No.: 18-cv-719

**Defendants' Notice of Cross-Motion for an Extension of Time to File Opposition  
and Opposition to Plaintiff's Motion for Entry of Order**

**NATURE OF ACTION:** 42 U.S.C. § 1983

**MOVING PARTY:** Defendants.

**DIRECTED TO:** Plaintiffs.

**DATE AND TIME:** To be determined by the Court.

**PLACE:** United States District Court for the Western District of New York, 68 Court Street, Buffalo, New York 14202.

**SUPPORTING PAPERS:** Declaration of Robert E. Quinn, Esq.

**ANSWERING PAPERS:** To be filed in accordance with this Court's briefing schedule.

**REPLY PAPERS:** To be filed in accordance with this Court's briefing schedule. RELIEF

**REQUESTED:** An order enlarging the period for plaintiff to respond to defendants' motion to Compel.

**ORAL ARGUMENT:** If deemed necessary by the Court.

Dated: September 3, 2019  
Buffalo, New York

TIMOTHY A. BALL, ESQ.  
Corporation Counsel

/s/Robert E. Quinn  
By: Robert E. Quinn  
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TO: NCLEJ  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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BLACK LOVE RESISTS IN THE RUST, et al.

Plaintiffs,

DECLARATION

-vs-

Civil Action No.: 18-cv-719

CITY OF BUFFALO, et al.

Defendants.

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Assistant Corporation Counsel, *of Counsel* to Timothy A. Ball, Esq., Corporation Counsel, under penalty of perjury and pursuant to 28 U.S.C. § 1746, declare the following to be true and correct:

1. I am an attorney licensed to practice law in the Courts of the State of New York and in the United States District Court for the Western District of New York, and an Assistant Corporation Counsel for the City of Buffalo, and I represent the Defendants in this action. As such, I am fully familiar with the facts and circumstances set forth below.

2. This Declaration is offered in Support of the Defendants' formal Cross-Motion to Extend the Deadline to file an Opposition to the Plaintiff's Motion to Compel discovery pursuant to Fed.R.Civ.P. 37, filed on July 25, 2019 pursuant to Fed.R.Civ.P. 6(b)(1)(B), (Dkt. No. 34), and as formal opposition to Plaintiffs' Motion for Entry of Order Granting Motion to Compel filed on August 19, 2019 (Dkt. No. 38).

3. Following service of the Plaintiffs' Motion for an Entry of Order, your Deponent immediately filed a letter to the Court dated August 19, 2019 (Dkt. 39), and an opposition to Plaintiffs' Motion to Compel dated August 20, 2019 (Dkt. 40).

4. I have been practicing in the Western District since 2009, and have handled 10 to 15 cases for the City of Buffalo Law Department before this Court, though admittedly none before your Honor, at various stages of their litigation, including several Motions to Compel. *See, Hester v. Buffalo Public Schools*, 17-cv-01027-LJV-HBS, Dkt No. 22; *Arroyo v. City of Buffalo et al.*, 15-cv-00753- RJU-LGF, Dkt No 40; *Peters v. City of Buffalo, et al.*, 10-cv-593 -WMS-JJM Dkt. No. 150; *Williams v. Mayhook et al.*, 09-cv-00898 Dkt. No. 36.

5. As set forth in our opposing papers, it has always been my experience that the Court issues a briefing schedule for motions in the Western District, and it was my expectation that this would happen in this case, which we believe is supported by the Local Rules, and would be warranted in this case given the scope of the arguments.

6. Based on Plaintiffs' Motion for Entry of an Order (*See*, DKT No. 38), I have reviewed the cited local rule regarding timing of opposition papers and have respectfully requested that the Court set a briefing schedule pursuant to 7(b)(1) allowing the Defendants' previously submitted Opposition to Plaintiffs' Motion.

7. In alternative, we request the Court allow our previously served opposition to be filed "late" pursuant to the good cause shown in our prior request and this Cross-Motion, as only a brief delay caused by excusable neglect without any prejudice to Plaintiff and arising from the mistaken expectation that a briefing schedule would be set.

8. As stated in the Local Rule, there is no deadline for when a briefing schedule is set and, again, based on my experience the time in which a scheduling order issues varies widely, which we believe is fully consistent with the requests made herein.

9. We respectfully submit that there would certainly be no prejudice to either party in setting such a briefing schedule at this point, allowing the Motion to be heard on the merits, as the issues and arguments have been briefed by both sides of the caption, and Defendants have submitted good faith arguments which are incorporated herein.

10. Upon information and belief, there is no return date set, and Plaintiffs have had the full opportunity to Reply to the Defendants' Opposition, which we submit mitigates against any claim of prejudice and would further the interest of fairness and purposes of deciding issues on their merits.

11. Defendants certainly intended to oppose Plaintiffs' Motion to Compel, and advised Plaintiffs' counsel of this fact the day it was made, and these arguments would come as no surprise given the number of times the issues have been discussed at our meet and confers. *See*, Dkt. 40(5)

12. Given the size of the Motion, the number of defendants, and the scope of the arguments set forth therein, particularly given the fact that your deponent has a very full case load and various other obligations in the law department, we also submit that additional time provided in a briefing schedule would be and is warranted.

13. As just one example of prior obligations among others, I was scheduled and preparing to begin a trial in State Supreme Court on August 15, 2019, which adjourned pending settlement on August 8, 2019, which required extensive time commitments.

14. At the time, the undersigned is assigned to handle approximately 162 open litigation defense files, approximately 1,601 property damage collection claims including over 200 currently in suit, as well as the processing of all personal injury and property damage notices of claim that are filed with the City.

15. Your Deponent also has a very limited support staff, works very long hours, and all of this is obviously balanced with the demands of having a family and the various obligations which come with that.

16. Additionally, the Law Department has also had a Legal Investigator charged with managing property damage and other miscellaneous claims retire sooner than expected due to health concerns, which resulted in your Deponent having to assume those responsibilities.

17. We therefore respectfully request the opportunity for this motion to be heard on the merits, particularly given the severity of the relief requested, the fact that Defendants include several public employees and a municipality, in light of the diligence hopefully shown by preparing a response as soon as possible when this issue was raised, and the general notion that cases and motions should be resolved on their merits.

**Wherefore**, the Defendants seek an Order of the Court Granting the Defendants' Cross-Motion and denying Plaintiffs' Motion, in whole or in part, issuing a briefing schedule affording additional time to file an opposition as well as an instruction on production, denying costs, attorneys fees, etc., and such other and further relief as the Court deems necessary and warranted under these circumstances.

Dated: September 3, 2019  
Buffalo, New York

TIMOTHY A. BALL, ESQ.  
Corporation Counsel

/s/Robert E. Quinn  
By: Robert E. Quinn  
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CERTIFICATE OF SERVICE

Civil Action No.: 18-cv-719

I, Robert E. Quinn, hereby certify that on September 3, 2019 the annexed document was electronically served on Counsel for the Plaintiffs in this case through the CM/ECF system:

Claudia Wilner, Esq.  
NATIONAL CENTER FOR LAW AND ECONOMIC JUSTICE  
275 Seventh Avenue, Suite 1506  
New York, NY 10001  
wilner@nclej.org

I certify under penalty of perjury that the foregoing is true and correct.

Dated: September 3, 2019  
Buffalo, New York

TIMOTHY A. BALL, ESQ.  
Corporation Counsel

/s/Robert E. Quinn  
By: Robert E. Quinn  
65 Niagara Square - 1103 City Hall  
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